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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,735	01/16/2001	Fredy Scheifele	01-110	9751

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EXAMINER

MERK, JOSEPH C

ART UNIT PAPER NUMBER

3727

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/759,735

Applicant(s)

SCHEIFELE, FREDY

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 8/9/04.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 9, 13, are rejected under 35 U.S.C. 102(b) as being anticipated by Woodson (US 3,239,105). Regarding claim 1, see Figs. 1-3 and 6 where the structure is shown. The tube body is 12 and 13 which is made of a plastic sheet. The tube head is opposite the closed end. The “shaped onto the first end of the body portion” limitation does not require any structure that is not in the reference. The nozzle is the narrowed part of the tube end as identified by numeral 11. The partition is stiffer than the tube body and passes through the interior body portion. The nozzle passages are unobstructed as seen in Fig. 2. The closure is the spring clip seen in Fig. 6. Regarding claims 5 and 6, see Col. 2, lines 22-34, where the partition can be made stiffer by making it thicker than the tube body. Regarding claim 9, the partition 10 is dimensionally adapted to the tube body portion. This limitation does not require any structure that is not in the reference. The crimped end is the end opposite of the nozzle. Regarding claim 12, the tube head has a shoulder that tapers and extends between a connecting portion and the nozzle and is the tapered part, which joins the wider tube body and the narrower nozzle. Regarding claim 13, the sheet is substantially flat as seen in Figs. 2 and 3.

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Claims 1-5, and 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Fukunishi et al (JP-05-246447). Regarding claims 1 and 9, see Figs. 1-5, where the structure is shown. The partition is thicker than the body tube. The sheet partition extends from the closure 16 through the interior of the tube and through the tube head and the nozzle. 11 and 12 are the unobstructed openings. The partition is stiffer than the wall of the tube body since it is twice as thick as the tube body. 16 is the crimp or closure. The tube head is 3, which is shaped on the tube body 15. Regarding claim 2 and 3, it is inherent that the deflection of the partition will be 50% or half of the deflection that of the body since the thickness of the partition is twice that of the body. Regarding claims 10-14, the tube head is thicker than the tube body as seen in Fig. 5. The lower end of 17 is the connecting portion. The upper end of 17 is part of the shoulder and is thicker than the wall of the tube body.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodson (US 3,239,105). Regarding claims 2 and 3, Woodson teaches that the sheet partition is stiffer than sheet of the tube body but does not teach the deflection of the partition is 15%-55% or 25%-50% of that of the tube body. Applicant has does not

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disclose that the claimed range of deflection is critical. It would have been obvious to one of ordinary skill in the art to vary the stiffness of the partition to achieve the results desired by the user or the use. Moreover, see Col. 2, lines 48-53, where the stiffer partition makes the equal volumes dispensed from the container. It would have been obvious to vary the stiffness of the partition to achieve the desire equal dispensing.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodson (US 3,239,105) in view of Scheifele (CA 2,229,879). Regarding claims 6-8, Woodson does not teach the specific thickness of the sheet material. Scheifele, as seen in the Figures and on page 21 teaches that the thickness of the sheet material can be in the claimed range. It would have been obvious to employ the thickness of Scheifele in the container of Woodson so that the container performs as desired. Moreover, applicant has not disclosed that the thickness of the sheet and the partition are critical and gives a wide range for both. Since these values are not deemed critical, then it would have been obvious to one of ordinary skill in the art to vary the material thickness to tailor the container to the user or a specific use.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukunishi et al (JP-05-246447) in view of Scheifele (CA 2,229,879). Regarding claims 6-8, Fukunishi et al does not teach the specific thickness of the sheet material. Scheifele as seen in the Figs. And on page 21 teaches that the thickness of the sheet material can be in the claimed range. It would have been obvious to employ the thickness of Scheifele in the container of Fukunishi et al so that the container performs as desired. Moreover, applicant has not disclosed that the thickness of the sheet and

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the partition are critical and gives a wide range for both. Since these values are not deemed critical, then it would have been obvious to one of ordinary skill in the art to vary the material thickness to tailor the container to the user or a specific use.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

This is a non-final rejection due to the new grounds of rejection.

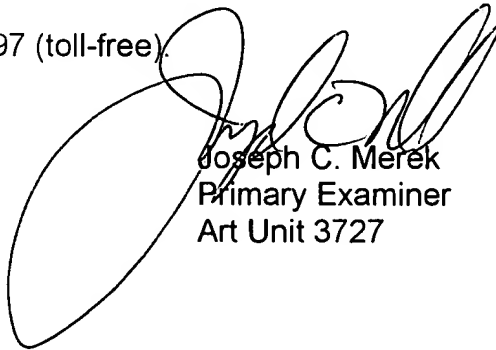
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rosier (US 3,227,319) is cited for teaching a tube head mounted on the tube body with a partition where the shoulder is thicker than the tube body and that the tube is closed by a crimp. JP 64-87327 is cited for teaching a tube with a partition can be formed any several ways as seen in Figs. 2, and 5-8. Reider et al (DE 43 21 275 is cited for Figs. 1-4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merék  
Primary Examiner  
Art Unit 3727